

Item SPR06-23 Response Form

Title: Criminal Cases: Mental Competency Proceedings in the Superior Court (adopt Cal. Rules of Court, rule 4.130)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

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Judicial Council, 455 Golden Gate Avenue,
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Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Invitations to Comment SPR06-23

Title	Criminal Cases: Mental Competency Proceedings in the Superior Court (adopt Cal. Rules of Court, rule 4.130).
Summary	Proposed rule 4.130 would clarify the proceedings when the defendant's mental competency is at issue in a criminal case.
Source	Criminal Law Advisory Committee
Staff	Joshua Weinstein, 415-865-7688, joshua.weinstein@jud.ca.gov
Discussion	<p>Mental competency proceedings in criminal cases are governed by statute and case law. Reconciling the statutes and court decisions can be difficult and the actual practice varies widely, not always conforming with required procedure. The purpose of the proposed rule is to clarify the appropriate and necessary procedures by bringing together the statutory and case law authorities and providing for uniform procedures. The proposed rule:</p> <ul style="list-style-type: none"> • Clarifies when the court must order mental competency proceedings. Subdivision (b) provides an overview for initiating mental competency proceedings. It provides that the court must initiate proceedings if the court has substantial evidence of the defendant's mental incompetency. (<i>People v. Ary</i> (2004) 118 Cal.App.4th 1016, 1020.) The court in <i>Ary</i> explained that "[e]vidence is substantial if it raises a reasonable doubt as to the defendant's competence to stand trial." (<i>Ibid.</i>, citing <i>People v. Jones</i> (1991) 53 Cal.3d 1115, 1152.) <p>The competency proceedings are initiated only if the court has the requisite doubt. Under a literal reading of Penal Code section 1368, competency proceedings must be initiated if defense counsel informs the court that he or she "believes the defendant is or may be mentally incompetent." (See Pen. Code, § 1368(a) and (b).) Case law, however, does not support that reading. According to reviewing courts, the court is not required to initiate proceedings if defense counsel's statements do not provide substantial evidence of the defendant's mental incompetency. Reviewing courts have stated that "a defendant is not entitled to a trial on the issue of his mental competency merely upon the statement of defense counsel, but that there must be objective substantial evidence of a doubt as to the defendant's mental competency before he is entitled to a full hearing pursuant to section 1368." (<i>People v. Stewart</i> (1979) 89 Cal.App.3d 992, 996; see also <i>People v. Hayes</i> (1999) 21 Cal.4th</p>

1211, 1280-1282; *People v. Welch* (1999) 20 Cal.4th 702, 737-738; and *People v. Hays* (1976) 54 Cal.App.3d 755, 760.)

- **Clarifies that criminal proceedings are suspended when the court orders mental competency proceedings.** Subdivision (c)(1) states that criminal proceedings are suspended on the initiation of mental competency proceedings and may not be reinstated until the trial on the competency has been completed and the defendant is either found competent or competency is reinstated under Penal Code section 1372.
- **Explains speedy trial calculations.** Subdivisions (c)(2) and (3) explain the effect of mental competency proceedings on speedy trial calculations in both felony and misdemeanor cases.
- **States procedures for selection of the court-appointed experts to examine the defendant.** Subdivision (d) provides that the court must appoint at least one expert to examine the defendant or two if the defense informs the court that the defendant is not seeking a finding of mental incompetency. (Pen. Code, § 1369.) The advisory committee comment for this rule clarifies that (1) the experts' reports under this rule are publicly accessible documents unless sealed under rule 243.1 and (2) the costs for experts appointed under this rule are borne by the court, but the court is not to pay for experts retained by the parties.

States the procedure for the trial on mental competency. Trial procedures, including the presumption of competency, the burden of proof, and the closing argument are addressed in (e).

Attachment

Rule 4.130 of the California Rules of Court would be adopted, effective January 1, 2007, to read:

Rule 4.130. Mental competency proceedings

- (a) [Application]** This rule applies to proceedings in the superior court under Penal Code section 1367 et seq. to determine the mental competency of a criminal defendant.
- (b) [Initiation of mental competency proceedings]** The court must initiate mental competency proceedings if the judge has a reasonable doubt, based on substantial evidence, about the defendant's competence to stand trial. The opinion of counsel, without a statement of specific reasons supporting that opinion, does not constitute substantial evidence.
- (c) [Effect of initiating mental competency proceedings]**
- (1)** If mental competency proceedings are initiated, criminal proceedings are suspended and may not be reinstated until a trial on the competency of the defendant has been concluded and the defendant either:

 - (A)** Is found mentally competent; or
 - (B)** Has his or her competency restored under Penal Code section 1372.
 - (2)** In misdemeanor cases, speedy trial requirements are tolled during the suspension of criminal proceedings for mental competency evaluation and hearing. If criminal proceedings are later reinstated and time is not waived, the trial must be commenced within 30 days after the reinstatement of the criminal proceedings, as provided by Penal Code section 1382(a)(3).
 - (3)** In felony cases, speedy trial requirements are tolled during the suspension of criminal proceedings for mental competency evaluation and trial. If criminal proceedings are reinstated, unless time is waived, time periods to commence the preliminary hearing or trial are as follows:

 - (A)** If criminal proceedings were suspended before the preliminary hearing had been conducted, the preliminary hearing must be

1 commenced within 10 days of the reinstatement of the criminal
2 proceedings, as provided in Penal Code section 859b.

3
4 (B) If criminal proceedings were suspended after the preliminary
5 hearing had been conducted, the trial must be commenced within
6 60 days of the reinstatement of the criminal proceedings, as
7 provided in Penal Code section 1382(a)(2).
8

9 **(d) [Examination of defendant after initiation of mental competency**
10 **proceedings]**
11

12 (1) On initiation of mental competency proceedings, the court must inquire
13 whether the defendant, or defendant's counsel, seeks a finding of mental
14 incompetence.
15

16 (A) If the defense informs the court that the defendant is seeking a
17 finding of mental incompetence, the court must appoint at least
18 one expert to examine the defendant.
19

20 (B) If the defense informs the court that the defendant is not seeking
21 a finding of mental incompetence, the court must appoint two
22 experts to examine the defendant. The defense and the
23 prosecution may each name one expert from the court's list of
24 approved experts.
25

26 (2) Any court-appointed experts must examine the defendant and advise the
27 court on the defendant's competency to stand trial. Experts' reports are
28 to be submitted to the court, counsel for the defendant, and the
29 prosecution.
30

31 (3) Statements made by the defendant during the examination to experts
32 appointed under this rule, and products of any such statements, may not
33 be used in a trial on the issue of the defendant's guilt.
34

35 **(e) [Trial on mental competency]**
36

37 (1) Regardless of the conclusions or findings of the court-appointed expert,
38 the court must conduct a trial on the mental competency of the
39 defendant if the court has initiated mental competency proceedings
40 under (b).
41

1 (2) At the trial, the defendant is presumed to be mentally competent, and it
2 is the burden of the party contending that the defendant is not mentally
3 competent to prove the defendant's mental incompetence by a
4 preponderance of the evidence.

6 (3) In addition to the testimony of the experts appointed by the court under
7 (d), either party may call additional experts or other relevant witnesses.

9 (4) After the presentation of the evidence and closing argument, the trier of
10 fact is to determine whether the defendant is mentally competent or
11 mentally incompetent.

13 (A) If the matter is tried by a jury, the verdict must be unanimous.

15 (B) If the parties have waived jury, the court's findings must be made
16 in writing or placed orally in the record.

18 **(f) [Posttrial procedure]**

20 (1) If the defendant is found mentally competent, the court must reinstate
21 the criminal proceedings.

23 (2) If the defendant is found to be mentally incompetent, the criminal
24 proceedings remain suspended and the court must follow the procedures
25 stated in Penal Code section 1370 et seq.

28 **Advisory Committee Comment**

30 The case law interpreting Penal Code section 1367 et seq. established a procedure for
31 judges to follow in cases where there is a concern whether the defendant is legally
32 competent to stand trial, but the concern does not necessarily rise to the level of a
33 reasonable doubt based upon substantial evidence. Before finding a reasonable doubt as
34 to the defendant's competency to stand trial and initiating competency proceedings under
35 Penal Code section 1368 et seq., the court may appoint an expert to assist the court in
36 determining whether such a reasonable doubt exists. As noted in *People v. Visciotti*
37 (1992) 2 Cal.4th 1, 34-36, the court may appoint an expert when it is concerned about the
38 mental competency of the defendant, but the concern does not rise to the level of a
39 reasonable doubt, based on substantial evidence, required by Penal Code section 1367 et
40 seq. Should the results of this examination present substantial evidence of mental
41 incompetency, the court must initiate competency proceedings under (b).

43 Once mental competency proceedings under Penal Code section 1367 et seq. have been
44 initiated, the court is to appoint at least one expert to examine the defendant under (d).

1 Under no circumstances is the court obligated to appoint more than two experts. (Pen.
2 Code, § 1369(a).) The costs of the experts appointed under (d) are to be paid for by
3 court, as the expert examinations and reports are for the benefit or use of the court in
4 determining whether the defendant is mentally incompetent. (See Cal. Rules of Court,
5 rule 810, function 10.)

6
7 Subdivision (d)(3), which provides that the defendant’s statements made during the
8 examination cannot be used in a trial on the defendant’s guilt, is based on the California
9 Supreme Court holding in *People v. Arcega* (1982) 32 Cal.3d 504, 522. (See also *People*
10 *v. Weaver* (2001) 26 Cal.4th 876, 959-963.)

11
12 Although the court is not obligated to appoint additional experts, counsel may
13 nonetheless retain their own experts to testify at a trial on the defendant’s competency.
14 (See *People v. Mayes* (1988) 202 Cal.App.4th 908, 917–918.) These experts are not for
15 the benefit or use of the court, and their costs are not to be paid by the court. (See Cal.
16 Rules of Court, rule 810, function 10.)

17
18 The expert reports, unless sealed under rule 243.1, are publicly accessible court
19 documents.

20
21 Both the prosecution and the defense have the right to a jury trial. (See *People v.*
22 *Superior Court (McPeters)* (1995) 169 Cal.App.3d 796.) Moreover, defense counsel may
23 waive jury, even over the objection of the defendant. (*People v. Masterson* (1994) 8
24 Cal.4th 965, 970.)

25
26 Either defense counsel or the prosecution (or both) may argue that the defendant is not
27 competent to stand trial. (*People v. Stanley* (1995) 10 Cal.4th 764, 804 [defense counsel
28 may advocate that defendant is not competent to stand trial and may present evidence of
29 defendant’s mental incompetency regardless of defendant’s desire to be found
30 competent].) If the defense declines to present evidence of the defendant’s mental
31 incompetency, the prosecution may do so. (Pen. Code, § 1369(b)(2).) If the prosecution
32 elects to present evidence of the defendant’s mental incompetency, it is the prosecution’s
33 burden to prove the incompetency by a preponderance of the evidence. (*People v. Mixon*
34 (1990) 225 Cal.App.3d 1471, 1484 fn. 12.)

35
36 Should both parties decline to present evidence of defendant’s mental incompetency, the
37 court may do so. In those cases, the court is not to instruct the jury that a party has the
38 burden of proof. “Rather, the proper approach would be to instruct the jury on the legal
39 standard they are to apply to the evidence before them without allocating the burden of
40 proof to one party or the other.” (*People v. Sherik* (1991) 229 Cal.App.3d 444, 459–460.)